

SENATE BILL REPORT

HB 1125

As Reported By Senate Committee On:
Judiciary, March 30, 2005

Title: An act relating to trust and estate management.

Brief Description: Managing trusts and estates.

Sponsors: Representatives Serben, Lantz, Priest, Shabro and Ahern.

Brief History: Passed House: 2/04/05, 96-0.

Committee Activity: Judiciary: 3/24/05, 3/30/05 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Esser, McCaslin and Rasmussen.

Staff: Lilah Amos (786-7429)

Background: Currently only "lawful" lineal descendants are included in the definition of issue for inheritance purposes.

Anti-lapse statutes address a situation where a person who is to inherit property dies before the testator dies. When the testator has not already directed the outcome in a will, the statute provides that descendants of the deceased person will inherit. The anti-lapse statute does not cover the situation in a trust when property is left subject to a contingency, and the beneficiary dies before the contingency is satisfied. Currently the interests of descendants of the deceased beneficiary in a trust will lapse.

A personal representative must both file an oath with the probate court and record the oath. In both probate and nonprobate estates, if the personal representative or notice agent chooses to publish notice to creditors, the publication must occur both in the county of decedent's residence and in the county of probate or notice. Creditors are generally barred from making a claim against an estate unless the claim is filed within twenty-four months; however, a seemingly inconsistent section provides a six year window for filing a claim.

Parents can nominate guardians for their minor children in a will. The guardian must then be appointed by a court. No specific provision allows a parent to appoint, in a power of attorney, a guardian for minor children or an attorney in fact to make health care decisions for minor children.

When a vacancy exists in the office of trustee and no successor trustee has been named, formal notice must be given to all beneficiaries even if they all agree to a nonjudicial change of trustee. Authorized agents who may be allowed entry into safe deposit boxes are not defined

The Uniform Transfer on Death Act adopted in Washington allows the owner of a security account to designate a beneficiary to take possession of the account upon death without the necessity of a probate. The term "investment management or custody accounts" is used in the statute, although this term does not precisely describe the accounts which the act was intended to cover.

Summary of Bill: Inheritance law is changed to remove the requirement that a descendant be "lawful" in order to be a lineal descendant. The status of an adopted person as a lineal descendant is clarified.

The anti-lapse statute is modified to expressly cover situations in which a person named in a will or trust dies after the testator or grantor but before the happening of some event upon which the right to inherit is contingent. The descendants of the person named in the will or trust will inherit unless the will or trust provides otherwise.

The requirement that a personal representative's oath be recorded is eliminated. Provisions regarding notice to creditors and the method of filing creditor's claims in both probate and nonprobate proceedings are modified. Notice is required to be published in only one county, and a creditor must file a claim in the county in which the estate is being administered, rather than the county of the decedent's residence, if the two are different. The six-year limitation on filing claims against an estate is eliminated, resulting in a uniform twenty-four month time limit within which claims can be made against estates.

In addition to surviving parents, sole parents are authorized to nominate guardians for their minor children. Parents are authorized to nominate a guardian for a minor child in a durable power of attorney. In a parent's power of attorney, the parent can authorize an attorney in fact to make health care decisions for minor children. The decision of a guardian appointed by the court will supersede the authority of an attorney in fact. If there is a conflict between the provisions of a will and a durable power of attorney nominating a guardian for a minor child, the most recent designation will control.

Notice provisions regarding a change of trustee are modified to provide that notice requirements apply to adult "distributees" of a trust. If all parties with interest in a trust agree to a change of trustee, notice need not be given.

Security accounts which are transferrable upon death are specified. Agents authorized to enter security deposit boxes are defined to include personal representatives, persons holding powers of attorney, and trustees.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill addresses issues which have been problematic to practitioners. It updates various sections of the law, modernizes procedures, and makes various minor changes which were suggested by the Washington State Bar Association probate and trust attorneys.

Testimony Against: None.

Who Testified: PRO: Representative John Serben, prime sponsor; Al Falk, Washington State Bar Association.